

WHITMAN BREED ABBOTT & MORGAN LLC

100 FIELD POINT ROAD

P.O. Box 2250

GREENWICH, CONNECTICUT 06830

203-869-3800

TELECOPIER: 203-869-1951

WRITER'S E-MAIL ADDRESS:

jshaban@wbamct.com

WRITER'S DIRECT DIAL NUMBER:

(203) 862-2362

September 8, 2006

**VIA FIRST CLASS MAIL**

Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

217541



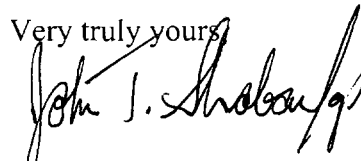
**Re: New York New Jersey Rail LLC and New York Cross Harbor Railroad  
Terminal Corp.-Corporate Family Transaction Exemption  
Docket No.: 34813**

Dear Sir/Madam:

Enclosed please find for filing an original and ten copies of Crawford Group's Petition to Revoke Exemption Granted to New York New Jersey Tail LLC and New York Cross Harbor Railroad Terminal Corp.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

  
John T. Shaban

JTS/ap  
Encls.

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Office of Proceedings  
SEP 15 2006  
Part of  
Public Record

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**BEFORE SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34813

217541



PETITION UNDER 49 U.S.C. §10502(d) TO REVOKE  
EXEMPTION UNDER 49 C.F.R. 1180.2(d)(3) GRANTED TO  
NEW YORK NEW JERSEY RAIL LLC AND  
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.

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SEP 15 2006  
SURFACE  
TRANSPORTATION BOARD

Respectfully submitted,

WHITMAN BREED ABBOTT & MORGAN LLC  
John T. Shaban, Esq.  
100 Field Point Road  
Greenwich, Connecticut 06830  
(203) 869-3800

Dated: September 8, 2006

**FILED**  
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BEFORE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34813

PETITION UNDER 49 U.S.C. §10502(d) TO REVOKE  
EXEMPTION UNDER 49 C.F.R. 1180.2(d)(3) GRANTED TO  
NEW YORK NEW JERSEY RAIL LLC AND  
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.

Robert Crawford, Arline Crawford and the Citrus Springs Trust (“Petitioners” and/or the “Crawford Group”) hereby petition the Board to revoke the July 27, 2006 Notice of Exemption granted to New York Cross Harbor Railroad Terminal Corp.’s (“NYCH”) and New York New Jersey Rail, LLC (“NYNJRR”) (collectively, “Applicants”) under 49 C.F.R. 1180.2(d)(3) (the “Exemption”) based on Applicants’ false and/or misleading representations regarding the nature and status of the purported ownership and control of NYCH.

1. Applicants openly admit that the Exemption is part of its plan to transfer NYCH and/or its operating assets to the newly formed limited liability holding company owned exclusively by Gordon Reger. See Amended Verified Notice of Exemption (the “Application”) at ¶¶ 2-4, 6. What Applicants have failed to disclose is that NYCH is the central topic in a number of lawsuits involving: (a) NYCH’s parent company, New York Regional Rail Corporation (“NYRR”), a public company with thousands of shareholders; (b) NYRR shareholders; and (c) certain former and present NYRR fiduciaries.

2. NYRR is one of the unnamed “entities [allegedly] controlled” by Reger to which Applicants site as evidence of a corporate family transaction. See Application at ¶¶ 3, 6. As described herein, however, Mr. Reger’s alleged “control” of NYRR/NYCH is under serious

challenge by NYRR shareholders who challenge Reger's authority to operate or transfer NYRR's core asset, NYCH, away from NYRR and its shareholders.

3. Because Applicants have misrepresented that the proposed transaction is a simple corporate intra-family transaction, the Exemption should be revoked, held in abeyance until the control issue is resolved in court, and/or rendered void *ab initio*. Indeed, while the various disputes ensue regarding who controls NYCH, NYCH and its operating assets should remain intact in order to ensure that NYCH's rail services are not disrupted by the conflict and/or the need to recapture assets following the ultimate resolution of who controls NYCH.

### **FACTS**

4. At present, there are three major factions presently engaged in five related lawsuits all dealing with the past and present management of NYRR. These groups are: (1) the Crawford Group -- the founders of NYRR and NYCH; (2) the Marsala/Bridges Group -- former NYRR fiduciaries and management after the Crawfords resigned; and (3) the Reger Group -- the purported new control group of NYRR and related Reger entities to whom the Marsala/Bridges Group purportedly transferred control of NYRR in February 2004.<sup>1</sup> Notably, the Crawford Group is the holder of by far the greatest number of shares of NYRR (approximately 26 million shares) as compared to the Reger Group (approximately 2 million shares) and the named members of the Marsala/Bridges Group (approximately 16 million shares).

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<sup>1</sup> The Crawford Group consists of Robert Crawford, Arline Crawford and the Citrus Springs Trust ("CST") (a trust funded by the estate of Arline Crawford's deceased uncle, and administered for the benefit of several members of the Crawford family). The "Marsala/Bridges Group" consists of: John Marsala; Ronald W. Bridges; Steven Hirsch; Joel Marcus; Andrea Cosgrove; Darryl S. Caplan, Esq.; Todd Sage; Stacey Sage A/K/A Stacie Sage; Mary Sage; John Taylor; Sherb and Co., LLP; and Feldman Sherb & Co., P.C. The "Reger Group" consists of: Gordon Reger; Transit Rail, LLC; GJ Railco Acquisition, LLC; Donald Hutton; James W. Cornell; Russell J. Arnst; Douglas Szalasny; Andreas Gruson; GJ Railco Assets, LLC; and Regus Industries, LLC.

### The Underlying Issuance of Unauthorized Preferred Shares

5. The Marsala/Bridges Group usurped control of NYRR from its shareholders in 2000 through the creation of illegal and unauthorized Series C super-voting preferred shares. After creating these alleged voting shares, and then distributing the shares to themselves, the Marsala/ Bridges Group preceded to squash the rights of common shareholders (who own over 200 million shares of publicly traded stock) and treat NYRR as their own private enterprise.

6. In 2004, the Marsala/Bridges Group purported to sell the Reger Group voting control of NYRR (and thus NYCH) through a proxy over the illegal Series C shares and the creation of more super-voting preferred "Series D" shares.

7. After the Reger Group received what they considered control, they formed GJ Acquisition Railco, LLC and GL Railco Assets LLC in an attempt to transfer NYCH and/or its operating assets out of NYRR. This is the impetus of the Marsala Derivative Action and motion for preliminary injunction (described below) -- i.e. to stop the transfer of NYCH assets away from NYRR. The Crawford Derivative Action (also described below) soon followed, and also raised the prefatory issue of whether the Reger Group even had control of NYRR based on the underlying unlawful and unauthorized creation of super-voting shares that form the basis of the alleged transfer of control to the Reger Group.

### The Five Related Cases

8. The central theme in all of these lawsuits is that the various management groups have used NYRR (and thus NYCH) as a private means of enriching themselves, rather than benefiting the shareholders of this publicly traded entity. These allegations of self-dealing and

breach of the fiduciary duties owed to NYRR's shareholders are at the core of the two shareholder derivative claims that challenge, among other things, the Reger Group's alleged authority over NYRR and NYCH.

(a) Marsala Derivative Action: Following the alleged transfer of control of NYRR to the Reger Group in February 2004, three NYRR shareholders and former fiduciaries filed a shareholder derivative in December 2005 in New York State Supreme Court (Index No.: 604283-05) on behalf of all NYRR shareholders. These derivative plaintiffs charge the Reger Group with breaches of fiduciary duty, mismanagement, unjust enrichment and fraud based on the Reger Group's stripping NYRR of its assets after they ostensibly assumed control. Of chief concern in this action is the preservation of NYCH assets as part of NYRR. The plaintiffs therefore filed an application for a preliminary injunction seeking to halt any transfers of NYRR assets, and in particular, NYCH and its operating assets. While the motion for a preliminary injunction is *sub judice*, the Reger Group is under Court Order to notify the Court of any potential transfer of NYRR assets before moving forward with any proposed transfer. See Exhibit A. at 25:9- 27:9.

(b) Crawford Derivative Action: In February 2006, the Crawford Group filed a separate derivative action on behalf of themselves and other similarly situated NYRR shareholders in New York Supreme Court (Index No.: 601024-06) asserting claims against the Reger Group and Marsala/Bridges Group for self-dealing, breaches of fiduciary duty and improper corporate practices both before and after the alleged takeover of NYRR by the Reger Group. The Crawford Derivative Action also seeks a judgment declaring the Reger Group's management of NYRR *ultra vires* -- arguing that the Marsala/Bridges Group's failure to abide by

Delaware law in connection with the prefatory issuances of preferred stock that enabled Marsala/Bridges to hand NYRR to the Reger Group has rendered the alleged transfer a nullity.

(c) The New Jersey Action: Also pending in New Jersey since July 2005 is NYRR's (as controlled by the Reger Group) action entitled NYRR, et al. v. Ronald Bridges, et al. (No. 06-0044) alleging fraud, self dealing and legal malpractice against several members of the Marsala/Bridges Group. This action started in state court, and has recently been removed to the Federal District Court in New Jersey.

(d) The Reger Securities Action: Moreover, many of the claims in the New Jersey Action and Crawford Derivative Action relate to the same actions that form the basis of the securities claims brought by Transit Rail, LLC (the Reger entity that allegedly gained control of NYRR and NYCH) in August 2005 entitled Transit Rail, LLC v. Marsala, et al. (W.D.N.Y.) (No. 05-CV-0564). Transit Rail alleges securities fraud by the Marsala/Bridges Group in connection with their mismanagement and accounting of NYRR prior to the purported sale of their interests to this Reger holding company.

(e) The Kings Actions: Finally, the Crawford Group is involved in a consolidated lawsuit in Kings County, New York in 2003 seeking damages based on NYRR and Marsala's failure to honor certain notes held by Mr. and Mrs. Crawford, and the improper cancellation and/or conversion of a large number of Mr. Crawford's shares, after the Crawfords left NYRR.

### **ARGUMENT**

9. Despite the above challenges to their actions and authority, the Reger Group (through innumerable limited liability holding companies such as NYNJR) has pushed forward

with their plans to rip from NYRR and its shareholders the core asset of its business – i.e., NYCH and the related licenses and leases.<sup>2</sup> As described above, however, not only is this proposed transaction being challenged in multiple suits, no transfer of NYRR/NYCH assets can take place without prior notification to and review by the New York Court.

10. Accordingly, the underlying basis for the Exemption -- i.e. that the transfer is a simple transfer among a corporate family -- is an unfounded representation that is belied both by a Court Order and/or the pending lawsuits that challenge the Reger Group's authority. The Exemption is thus fatally infirm based on Applicants' false and/or misleading representations regarding the nature and status of the purported ownership and control of NYCH.

11. Moreover, by maintaining the status quo -- keeping NYCH and its assets where they are -- this Board can compliment the Court's efforts and ensure that no customers of NYCH suffer from reduced rail services caused by the pending "tug of war" between the NYRR/NYCH's shareholders and various management factions regarding who controls NYCH.

\* \* \*

For the forgoing reasons, Petitioners assert that the Exemption should be revoked, held in abeyance until the control issue is resolved in court, and/or rendered void *ab initio*.

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<sup>2</sup> Along with the proposed improper transfer of NYCH assets to another Reger entity, the Reger Group is also working toward the transfer NYCH's long term lease to use the Greenville Rail Yards in Jersey City, New Jersey to Conrail. The Greenville Rail Yard is a 22 acre property on Jersey City's waterfront owed by Conrail. In 1993 Robert Crawford negotiated the long term lease for use of the Greenville Rail Yard by NYCH and NYRR. This lease is the key asset of NYCH and NYRR, and is the basis for NYRR's business and value. Indeed, through the Greenville Rail Yard, garbage can be shipped out of New York City by rail, saving the City near \$1,000,000,000 each year, and offering \$100 million profit to the entity that controls the yard.



Dated: September 8, 2006

Respectfully Submitted,

WHITMAN BREED ABBOTT & MORGAN LLC  
*Attorneys for Petitioners*

By: 

John T. Shaban, Esq.

Whitman Breed Abbott & Morgan LLC

100 Field Point Road

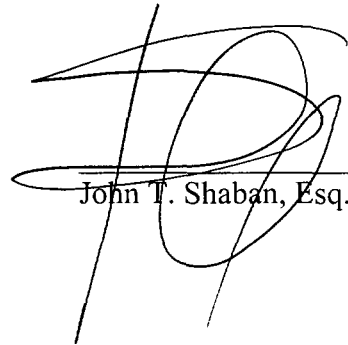
Greenwich, Connecticut 06830

(203) 869-3800

CERTIFICATE OF SERVICE

The undersigned affirms and certifies that a copy of the foregoing was sent to the following counsel of record via first class mail this 8th day of September, 2006:

John D. Heffner, Esq.  
John D. Heffner, PLLC  
19290 N. Street, N.W. Suite 800  
Washington DC 20036



John T. Shaban, Esq.



1  
2 SUPREME COURT OF THE STATE OF NEW YORK  
3 COUNTY OF NEW YORK: CIVIL TERM, PART 49

4 -----X  
5 JOHN MARSALA, STEVEN HIRSCH and  
6 JOEL MARCUS, on their own behalves and  
7 On behalf of NEW YORK REGIONAL RAIL CORP.,

8 Plaintiff,

9 -against-

10 GORDON REGER, TRANSIT RAIL, LLC,  
11 GJ RAILCO ACQUISITION, LLC, DONALD  
12 HUTTON, JAMES W. CORNELL, RUSSELL J.  
13 ARNST, DOUGLAS SZALASNY, ANDREAS  
14 GRUSON, NEW YORK REGIONAL RAIL CORP.,  
15 GJ RAILCO ASSETS, LLC and REGUS  
16 INDUSTRIES, LLC,

17 Defendants.

18 -----X  
19 Index No. 604283/05

20 60 Centre Street  
21 New York, New York  
22 January 10, 2006

23 B E F O R E:

24 HONORABLE HERMAN CAHN, Justice

25 A P P E A R A N C E S:

26 ALTMAN & COMPANY, PC  
Attorneys for the Plaintiffs  
260 Madison Avenue  
New York, New York 10016  
BY: STEVEN ALTMAN, ESQ.  
ERIC P. ROSENBERG, ESQ.

HARTER, SECREST & EMERY, LLP  
Attorneys for the Defendants  
Hutton, Cornell, Arnst, Szalasny, NYRR  
Twelve Fountain Plaza, Suite 400  
Buffalo, New York 14202-2293  
BY: KENNETH W. AFRICANO, ESQ.

John A. Bonaccolta, C. S. R., Official Court Reporter

1  
2 A P P E A R A N C E S: (CONT'D)  
3

4 HISCOCK & BARCLAY, LLP  
5 Attorneys for Defendants  
6 Gordon Reger, GJ Railco,  
7 GJ Railco Acquisitions  
8 5110 Main Street, Suite 218  
9 Amherst, New York 14221  
10 BY: FRANK T. GAGLIONE, ESQ.  
11

12 EPSTEIN, BECKER & GREEN, LLP  
13 Attorneys for Defendants  
14 Regus Industries and Andreas Gruson  
15 250 Park Avenue  
16 New York, New York 10017  
17 BY: KENNETH J. KELLY, ESQ.  
18  
19  
20  
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24 JOHN A. BONACCOLTA, C.S.R.  
25 Official Court Reporter  
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John A. Bonaccolta, C. S. R., Official Court Reporter

Proceedings

MR. ALTMAN: There is a point of order. I believe already somehow one of the defendants' counsel managed to slip to the court reporter a memorandum of law which to our minds is --

THE CLERK: Someone sent papers they wouldn't accept downstairs.

THE COURT: Let's leave that. Question. I'm asking, what's happened since this case started? Have any assets been transferred.

MR. GAGLIONE: Frank Gaglione. I represent Mr. Reger. The answer is no. The assets were sold for fair consideration to GJ Railco Assets and GJ Railco Acquisition.

THE COURT: When was that?

MR. GAGLIONE: November 6th.

THE COURT: That was before.

MR. GAGLIONE: What is before this Court is an application now to effectively prevent us from obtaining capital and investors to allow us to move forward.

THE COURT: Why don't we let counsel explain. You've answered my question. Let him defend his case.

MR. ROSENBERG: Your Honor, I'd like to start with first, basic issues, which is choice of law. New York Regional Rail, the corporation at issue here, is a Delaware corporation. When we put the original papers I

## Proceedings

1  
2 assumed it was Delaware law without giving much thought.  
3 The defendants in their opposition papers argued it's  
4 New York law. If their argument is accepted, all these  
5 big stacks of papers aren't going to mean much. It will  
6 make life easier for everybody, including the Court.  
7 That is because under New York law the transfer of the  
8 assets was indisputably black and white, void.

9 THE COURT: Why?

10 MR. ROSENBERG: Pursuant to BCL 909, in order  
11 to transfer substantially all the assets for the  
12 corporation -- and there is no dispute these are  
13 substantially all the assets of the corporation. It  
14 says so in the New York Regional Rail, New York Regional  
15 Rail form 8K filed with the SEC. There is no dispute  
16 about that.

17 In order to sell substantially all the assets  
18 of a corporation there's a specific procedure that needs  
19 to be followed. A shareholder meeting has to be called,  
20 new notice has to be given and not only the shareholders  
21 who are entitled to vote, the shareholders who are not  
22 entitled to vote must be given notice and allowed to  
23 attend the meeting. You can't do it by consent.

24 In the surreply papers the defendants have put  
25 in, they say we did this by consent. You can't do it  
26 that way.

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## Proceedings

should they have paid?

MR. ROSENBERG: They paid \$50,000, only 25,000 up front for all of NYCH's shares. 95 percent of the shares New York Regional Rail used to own. They paid another \$50,000 or so for CH Partners, which owns some heavy equipment that New York Regional Rail -- New York Cross Harbor, NCCH owns. They paid 400,000 for some other assets.

Every one of those transactions was way under valued. There are a number of ways to demonstrate that and also to demonstrate the appraisal they used to justify this transaction which we saw for the first time last week, two days before our reply papers were due.

This appraisal is off base. It was totally unreasonable. Had they wanted to sell these assets, had it been to sell all of the assets of the corporation, they had to do it -- the case law says entire fairness is the rule. That consists of two elements. Fair procedure and fair price. The procedure was not fair. They didn't do it in a commercially, reasonable way. They sold it to themselves. They sold it to themselves. No auction. No offering it to anybody.

THE COURT: I'm asking you, for argument's sake, we accept that. They paid \$500,000.

MR. ROSENBERG: Something like that.

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Proceedings

THE COURT: What should they have received?

MR. ROSENBERG: For 500,000? This is a company --

THE COURT: What should they receive?

MR. ROSENBERG: Twenty to \$50 million according to the defendants own actions. Their own investment, initial investment in New York Regional Rail for preferred stock convertible to 11 percent of the fully diluted stock of the corporation implied a value of \$20 million.

They had a merger proposal about a year and a half ago that implied a value of \$50 million.

New York Regional Rail during this, during a period, by the way, prior to the time it came into position to fully exploit the assets as indicated in our papers, it recently came in position to fully exploit the assets and got offer after offer since that time. Before that time the total market capitalization was \$20 million. They got \$500,000.

The defendants say over and over in their papers, Gordon Reger says in his papers this is such a mess nobody but I would invest in this company.

According to the appraisal you would think he's paying several times the value of these properties because they list a bunch of liabilities that don't

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## Proceedings

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2 Apparently the trucking operation doesn't belong to us  
3 any more. We've lost six and a half million dollars of  
4 revenue in cash flow a year as a result of that loss of  
5 the trucking operation.

6 Why is that important to this case? When  
7 these fellows come in and say, hey, this company used to  
8 be worth X amount of money, why would you invest money  
9 and why are you interested? That's before we found the  
10 there was massive fraud. These other lawsuits have  
11 started. The trucking operations are gone. NYRR was  
12 facing a situation where it was going out of business.

13 Now, interesting new occurrence. This past  
14 weekend one of the barges sunk to the bottom --

15 THE COURT: Yes.

16 MR. AFRICANO: We have an affidavit that  
17 discusses this point. You don't have it yet. We did  
18 get a copy to these gentlemen and to the other  
19 attorneys. Mr. Gaglione can present his client's  
20 affidavit.

21 THE COURT: That was one of your barges?

22 MR. AFRICANO: Now it's owned by the Regers.  
23 It's simpler if you call it Cross Harbor Railroad.

24 THE COURT: Cross Harbor.

25 MR. AFRICANO: Cross Harbor. Ten rail cars on  
26 it. It's going to cost \$250,000. It was in the custody

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## Proceedings

of a warehouse facility at the time. There are ten lawsuits already involving these entities. There will be an eleventh one over this event. Here's not the place to argue whose fault it is.

The bottom line is they belong to Cross Harbor. They need to get taken out of the harbor. We estimate the cost is \$250,000. Now it belongs to Mr. Reger, Mr. Reger to take it out. The Coast Guard will take it. They will charge \$750,000. From my clients' standpoint, NYRR, we're thinking it's kind of a good thing we sold this company.

If you look in the appraisal they talk about problems with barges, problems with the fact you need a million dollars to get this operation going again. If NYRR hung on to this business with no money coming in, losing money at the rate of \$50,000, with the negative cash flow. We got tax problems, they say 2 to 3 million. We say as much as 9 million. This company is going down just like it went to the bottom of the New York harbor. The only chance it's surviving is from Mr. Reger to dump money into it. He's not going to do that if they're enjoined from pursuing to use their assets as they need to.

One more thing. Delaware law, New York law, I don't think the injunction is warranted under either.

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## Proceedings

Subcontractor. I misspoke. It's a subcontractor. It not owned. It was never owned. Their statement about taxes is a gross misrepresentation. We would love to cross-examine --

THE COURT: Let me take this as a submission. We'll give you a response on that.

MR. ROSENBERG: The valuations here are crazy.

MR. ALTMAN: I think we resolved the TRO aspect by your securing from the defendants an agreement they would not do anything further among some proposed proceeding. If we can get that extension while the motion is sub judice.

MR. GAGLIONE: The Court asked whether anything was going to happen until Tuesday. My answer was, no, nothing happened. That's the end of it. We agreed to nothing.

THE COURT: What's going to happen from here on?

MR. GAGLIONE: We're trying to put together an operating entity so we can get the cash in.

THE COURT: Are you going to further sell these assets?

MR. GAGLIONE: We're going to have family reorganization. You have GJ Holding owns GJ Railco Acquisition, GJ Railco Assets and it owns New York, New

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## Proceedings

Jersey Railroad. We want to make New York, New Jersey Railroad an operating company. We cannot do that until Conrail agrees allow us to do that. We're having discussions with Conrail. If they don't allow us to do that, nothing will happen.

THE COURT: When will you get an answer?

MR. GAGLIONE: There's discussions with Conrail this week. And I would guess within 30 days or so.

THE COURT: Would you reasonably expect an answer tomorrow?

MR. GAGLIONE: I can't say that. I'm not involved in those discussions. There is special counsel that's involved in that kind of thing. Let me say this. If fair consideration was paid in the first place, it's irrelevant.

Secondly, they're assuming even if there were any assets transferred to an operating company, if there were, we're not suggesting there necessarily will be, they're suggesting favorable consideration would not be paid then. That's not so.

THE COURT: I'm going to leave it for right now the way it is.

MR. ALTMAN: We're confident when you look at the papers and realize New York law applies, they're

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## Proceedings

1  
2 dead in the water. If they do something before this  
3 while this motion is sub judice --

4 THE COURT: This will be moved quickly. If  
5 there is any further change, by that I mean if the  
6 assets are transferred, if they are further alienated in  
7 any way outside the ordinary course of business or if a  
8 substantial mortgage, if they are mortgaged in any form,  
9 I'd like you to notify counsel and me.

10 MR. GAGLIONE: Yes. Can we submit an order?

11 THE COURT: The motion is sub judice.

12 MR. AFRICANO: All right.

13 THE COURT: I'm not going to extend any TRO.

14 MR. GAGLIONE: I understand.

15 MR. ALTMAN: We'd like to hand up the  
16 originals of our papers.

17 THE COURT: I that agreeable?

18 MR. KELLY: Yes.

19 MR. ALTMAN: Our objection is the surreply  
20 memorandum of law which was served by e-mail 9:15 this  
21 morning.

22 MR. AFRICANO: I have the surreply.

23 THE COURT: Why the surreply at 9:15?

24 MR. AFRICANO: The surreply memorandum of law  
25 addresses Delaware law. In their reply I saw for the  
26 first time Delaware law, section 271 precludes our

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## Proceedings

transaction.

THE COURT: I'll take it.

MR. AFRICANO: There's one other affidavit that we do not have here. We can get it to you within an hour. It relates to, regarding barges that sunk this weekend.

THE COURT: Get it to my chambers.

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

  
JOHN A. BONACCOLTA, C.S.R.  
OFFICIAL COURT REPORTER

John A. Bonaccolta, C. S. R., Official Court Reporter